IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.333 OF 2005

Shri Bharat Bhanudas Lale
and others .... Petitioners
Vs.
Smt. Surekha Pradeep Lale
and others .... Respondents

Shri Suhas M. Oak for the Petitioners.

Shri B.H. Mehta, Addl. Public Prosecutor,
for the Respondent Nos.2 & 3.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: FEBRUARY 14, 2005

P.C:

1. Heard. The grievance of the learned Advocate for the petitioners is that the police could not have proceeded with the investigation once the chargesheet is filed and the Sessions Court was seized with the matter. Reliance is sought to be placed in the decisions in the matters of **Randhir Singh Rana v. State (Delhi Administration),** reported in (1997) 1 SCC 361 and **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v. State of Andhra Pradesh and others,** reported in 1999 Cri.L.J. 3661. It is the contention of the learned Advocate for the petitioners that once the Sessions Court is seized with the matter on completion of the investigation and filing of the chargesheet, the

police of their own, without the prior permission of the Court, could not have proceeded with the investigation. Attention is drawn to para 5 of the judgment of the Apex Court in **Randhir Singh Rana's** case (supra). The said para reads thus:-

> "The decision in Ram Lal Narang v. State (Delhi Admn) has laid down that despite a Magistrate taking cognizance of an offence upon a police report, the right of police to further investigate even under the old 1898 Code was not exhaustive and the police could exercise such right often as necessary when fresh information came to light. {This position is now beyond pale of controversy because of sub-section (8) of Section 173 of the new Code.} But then a rider was added stating that after cognizance has been taken, then with a view to maintain independence of the magistracy and the judiciary, interests of the purity of administration of criminal justice and interests of the comity of the various agencies and institutions entrusted with different stages of such administration,

> it would "ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light"."

Referring to the observations therein that ordinarily it is desirable that the police should inform the Court and seek formal permission to make further investigation, it is sought to be argued that since in the present case the police had not obtained prior permission of the Court inspite of the fact that the matter was pending before the Court, the action on the part of the police is ab initio bad in law in relation to the re-opening of the case.

2. Undisputedly, this issue was also raised in **Criminal Writ Petition No.2296 of 2004** {Smt. Surekha P. Lale v. The State of Maharashtra & another} wherein the Division Bench {Smt. Ranjana Desai & Shri A.S. Oka, JJ.} had passed the following order:-

> "2. The learned APP states that investigation in C.R. No.126/01 is reopened. In support of this, she has submitted in this court a copy of the report sent by police inspector

> Mangalvedha Police Station dated 6-12-2004. The said report is taken on record and marked "X" for identification.
>
> 3. Considering the nature of the allegations made in the petition, we direct that the investigation be conducted under the supervision of Superintendent of Police, Solapur (Rural). Ad-interim relief granted by us shall continue for a period of six weeks from today."

Apparently, when the matter was brought to the notice of this Court that the Police Inspector had re-opened the investigation, this Court had specifically directed that the investigation should be conducted under the supervision of the Superintendent of Police, Solapur, thereby this Court gave its approval for re-opening of the investigation considering the nature of the allegations and the grievances of the complainant.

3. As regards the decision of the Apex Court in Randhir Singh Rana’s case, the Apex Court has nowhere held that in each and every case the police for the purpose of further investigation have to take prior permission of

the Court after the filing of the chargesheet and while the matter is pending before the Court. Undoubtedly, there is an observation to the effect that ordinarily it is desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light. That does not lead to the conclusion that the Apex Court has held that in each and every case prior permission for the purpose of further investigation is necessary once the chargesheet is filed. In fact, the provisions of law comprised under Section 173(8) of the Code of Criminal Procedure clearly entitle the police to re-open the investigation on its own once fresh facts come to the knowledge of the investigating machinery, even after the filing of the chargesheet and while the matter is pending before the Court.

4. It is well-settled law that each and every observation in a judgment, whether of the Apex Court or of the High Court, cannot be construed as a pronouncement of law on any issue as such. The ratio of the decision is to be understood after considering the facts in that case, the points for consideration which arise in the matter and the decision given by the Court on those issues after taking into consideration the rival contentions of the parties. The observations in para 5 in Randhir Singh Rana’s case are in relation to

the decision delivered by the Apex Court earlier in **Ram Lal Narang v. State (Delhi Admn.),** reported in (1979) 2 SCC 322. In fact, similar is the decision of the Apex Court in **Sri. B.S.S.V.V. Vishwandadha Maharaj's case** (supra). Therein also the Apex Court had ruled that:-

> "Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the Court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.), AIR 1979 SC 1791. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the Court and seek formal permission to make further investigation."

Obviously the Apex Court has nowhere held that the police are not entitled to conduct further investigation. Undoubtedly, a rider also has been added that it is desirable that the police should inform the

Court and seek its formal permission. This observation itself discloses that it is not mandatory in each and every case that the police should seek prior permission for re-opening of the investigation. Undoubtedly, it is always desirable that the police should keep the Court informed about such acts by the police which can have some effect on the matter which is pending before the Court and considering the same, it is expected that the police should keep the Court informed about the same and should obtain formal permission. Absence of formal permission however by itself would not nullify or would not render the investigation to be bad in law. Besides, in the case in hand, undisputedly, when the matter came up before this Court in Criminal Writ Petition No.2296 of 2004 (supra), the Division Bench has specifically passed an order directing the investigation to be conducted under the supervision of the Superintendent of Police. Being so, there is not only formal but specific permission granted by this Court for such investigation to be carried out. Considering the same, there is absolutely no substance in the petition. The petition is, therefore, rejected.

(R.M.S.Khandeparkar, J.)

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(P.V.Kakade, J.)